

# LIONEL SAWYER & COLLINS

ATTORNEYS AT LAW

300 SOUTH FOURTH STREET

SUITE 1700

LAS VEGAS, NEVADA 89101

(702) 383-8888

FAX (702) 383-8845

lsc@lionelsawyer.com

www.lionelsawyer.com

December 9, 2013

JENNIFER J. GAYNOR  
CHRISTOPHER WALTHER  
KEVIN J. HEJMANOWSKI  
KETAN D. BHIRUD  
ROBERT W. HERNQUIST  
COURTNEY MILLER O'MARA  
BRIAN H. SCHUSTERMAN  
MARK J. GARDBERG  
JAMES B. GIBSON  
GREG J. CARLSON  
JOHN D. TENNERT

MARLA J. HUDGENS  
STEVEN C. ANDERSON  
RYAN A. ANDERSEN  
KATHERINE L. HOFFMAN  
VAR LORDAHL, JR.  
PHILLIP C. THOMPSON  
AMY L. BAKER  
JORDAN A. DAVIS  
KENDAL L. DAVIS  
CHANDANI K. GILL

SAMUEL S. LIONEL  
GRANT SAWYER  
(1918-1996)  
JON R. COLLINS  
(1923-1987)  
RICHARD H. BRYAN  
JEFFREY P. ZUCKER  
PAUL R. HEJMANOWSKI  
ROBERT D. FAISS  
A. WILLIAM MAUPIN  
DAVID N. FREDERICK  
RODNEY M. JEAN  
TODD TOUTON  
LYNDA S. MABRY  
MARK H. GOLDSTEIN  
KIRBY J. SMITH  
COLLEEN A. DOLAN  
JENNIFER A. SMITH  
DAN R. REASER  
PAUL E. LARSEN  
ALLEN J. WILT  
LYNN S. FULSTONE  
RORY J. REID  
DAN C. MCGUIRE

JOHN E. DAWSON  
FRED D. "PETE" GIBSON, III  
CHARLES H. MCCREA JR.  
GREGORY E. SMITH  
MALANI L. KOTCHKA  
LESLIE BRYAN HART  
CRAIG E. ETEM  
TODD E. KENNEDY  
MATTHEW E. WATSON  
JOHN M. NAYLOR  
WILLIAM J. McKEAN  
ELIZABETH BRICKFIELD  
GREGORY R. GEMIGNANI  
LUNDA M. BULLEN  
LAURA J. THALACKER  
DOREEN SPEARS HARTWELL  
LAURA K. GRANIER  
MAXIMILIANO D. COUVILLIER III  
ERIN FLYNN  
JENNIFER ROBERTS  
MARK A. CLAYTON  
MATTHEW R. POLICASTRO  
CHRISTOPHER MATHEWS  
PEARL L. GALLAGHER

OF COUNSEL  
RICHARD J. MORGAN\*  
ELLEN WHITTEMORE  
PAUL D. BANCROFT

\*ADMITTED IN CA ONLY

WRITER'S DIRECT DIAL NUMBER  
(702) 383-8819  
PLARSEN@LIONELSAWYER.COM

Joe Theile, Management Analyst  
Nevada Division of Public & Behavioral Health (DPBH)  
Medical Marijuana Program  
4150 Technology Way  
Carson City, NV 89706-2009

*Via Facsimile & US Mail*

Re: Proposed Amendments to Nevada Administrative Code  
Chapter 453A (Medical Marijuana Registration)

Dear Mr. Theile:

I wish to submit some limited written comments on the most recent draft regulations scheduled to be considered at the workshops to be held on December 23, 2013. I also wish to respectfully protest against the scheduling of a rulemaking workshop at a date so close to the Christmas and New Year's holidays. Indeed, I respectfully request an additional workshop be scheduled in early January, with sufficient accommodation to public participation (by video conferencing, internet video and telephone link) to enable your agency to actually hold a meaningful public review of the proposed regulations.

My substantive comments on the proposed regulations are as follows:

Section 26(3): Section 26(3) contemplates that evidence of the financial status of an applicant be provided exclusively by a "financial institution." This exclusive reliance on documentation from financial institutions ignores the unfortunate fact that financial institutions have often refused to establish normal business/banking relationships with medical marijuana establishments (MME) and operators due to questions regarding the MME's legality under the federal Controlled Substance Act. See attached news articles. The current draft regulation's exclusive reliance on

LIONEL SAWYER & COLLINS  
ATTORNEYS AT LAW

Joe Theile, Management Analyst  
December 9, 2013  
Page 2

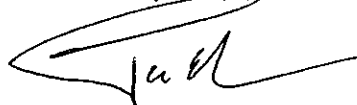
documentation from a "financial institutions" may effectively preclude any prospective applicant from filing a complete application.

I have personally confirmed that major financial institutions in Nevada may be reluctant to cooperate with MME applicants in providing the information sought by Section 26(3). Accordingly, I respectfully suggest that Section 23(3) be modified to enable an applicant to demonstrate that applicant's liquidity and source of funds by any reliable evidence; this would be consistent with Senate Bill 374 at Section 10(3)(a)(2)(III), which only requires "evidence that the applicant controls not less than \$250,000 in liquid assets" and does not specify or limit that "evidence" to be from a financial institution alone.

Section 35: The current proposal requiring a certificate holder to "surrender" its certificate and reapply for a certificate is an unnecessary and unworkable regulation. Requiring the "surrender" of a certificate prior to the review and approval of a new investor or location precludes capital infusions into these businesses and stifles business innovation. If the Division wishes to review any new investor or new location, the procedure used for liquor or gaming is a good analogue: new investors must apply and be approved prior to their investment in the regulated business being consummated. A good operator then has the comfort of preserving its existing operation while new investors are vetted and licensed, while the Division also has the comfort of reviewing new investors prior to the involvement in the business. Section 35, as currently proposed, is both unwieldy and unnecessary.

Thank you for the opportunity to submit these written remarks on the proposed regulations. Once again, I respectfully request that an additional workshop be scheduled to allow interested persons to attend either actually or electronically (by video conference, internet conference or telephonic conference) in order to provide comments on these proposed regulations.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paul E. Larsen', with a stylized flourish extending from the end.

Paul E. Larsen

Enclosures: As Stated

- [community banking](#)
- [consumer finance](#)
- [bank technology](#)
- [bankthink](#)
- [special reports](#)
- [conferences & events](#)
- [data](#)
- [resource center](#)

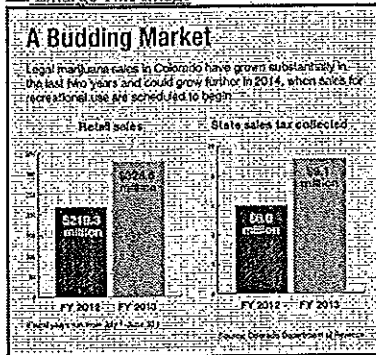


Bloomberg News

Colorado Gov. John Hickenlooper wants regulators to allow marijuana producers, processors and retailers to accepting card payments, make deposits and pay suppliers by clearing house network.

Related

[Enlarge This Image](#)



Related

[Drug Laws Ease but Bankers Still Say 'No' to Dealers](#)

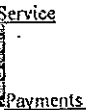


[What's Behind Racial Bias Claims](#)

[Against Banks](#)



[The Surprising Truth About Big Banks' Customer Service](#)



[Payments Networks that Put America's to](#)

[Shame](#)

## Federal Banking Regulators Pressed to Act on Marijuana Businesses

by Kevin Wack

DEC 9, 2013 1:49pm ET

[Print](#)

[Email](#)

The arm-twisting is coming from a hodgepodge of officials who don't necessarily care whether pot is legal, but who hope to prevent armed robberies and money laundering in states where it's currently being sold on a cash-only basis. That group includes governors, members of Congress, state banking regulators, and local law enforcement officials.

"The people of our state have spoken," says Scott Jarvis, director of the department of financial institutions in Washington, where a 2012 referendum legalized the recreational use of pot. "For this to really work, it needs to be in the banking system."

In recent weeks, the relevant federal agencies have signaled that they intend to provide more clarity to banks — though it's unclear when they will do so, how far they will go, and whether their guidance will provide sufficient comfort to nervous bankers.

Involved in the deliberations are the Justice Department, the Financial Crimes Enforcement Network, the Federal Deposit Insurance Corp., the Federal Reserve Board, the Office of the Comptroller of the Currency and the National Credit Union Administration.

Their discussions hold important ramifications for banks not just in Colorado and Washington, but also in 18 other states, plus the District of Columbia, where pot is sold for medicinal use. Nationwide, the state-regulated markets for marijuana are currently worth an estimated \$1.44 billion annually, according to a recent report by ArcView Market Research.

Many bankers are skittish about providing banking services to pot sellers and growers because federal law outlaws the possession of marijuana, even though some states allow it. No one believes the Congress is going to eliminate that fundamental conflict anytime soon.

So the question is: will federal regulators be able to provide banks and credit unions that are interested in the pot business a high enough level of assurance that they won't get in trouble for establishing ties.

"We have banks that would gladly bank these businesses," says Don Childears, president of the Colorado Bankers Association. "And we have others that say even if it was perfectly legal, they'd not touch it."

Marijuana businesses have long struggled to secure banking relationships, but the issue has taken on greater prominence since voters in Colorado and Washington approved the recreational pot measures. Both state laws go into effect next year.

In August, the Justice Department said that marijuana enforcement would be a low priority in states that meet certain criteria, signaling a desire on the part of the Obama Administration to defer in large part to the states. But [the Justice Department memo](#) did not address the complicated issues that banks face.

In October, Colorado Gov. John Hickenlooper and Washington Gov. Jay Inslee [asked federal banking regulators](#) to issue guidance that would move more pot businesses into the banking system. They want marijuana producers, processors and retailers to operate any other legal business — accepting payments by debit and credit card, making deposits, and paying suppliers by check or via automatic clearing house network.

The two Democratic governors suggested that banks should be required to do extra due diligence to ensure that anti-money laundering laws are not violated.

"Access to the banking system by these state-licensed businesses is a necessary component in ensuring a highly regulated marijuana system that will accurately track funds, prevent criminal involvement, and promote public safety," the two governors wrote in a letter to regulators.

At a Senate hearing earlier this year, King County, Wash., Sheriff John Urquhart testified that unless pot businesses can open bank accounts, there's likely to be more crime.

"Cash-only businesses are prime targets for armed robberies, and cash-only businesses are very difficult to audit, leading to possible tax evasion, wage theft and diversion of the resources we need to protect public safety," he said.

People who work in the marijuana business say that the industry's reliance on cash causes logistical hassles and sparks concern about employees' physical safety. "We have female members of our industry who have to walk into the [Internal Revenue Service] branch with tens of thousands of dollars of cash," says Steve Fox, lobbyist for the National Cannabis Industry Association.

That said, some banks have been willing to take the risks involved with providing services to marijuana businesses, likely because such accounts carry lucrative fees. [A Fincen report from last year](#), later made public, reported that 87 banks in Colorado had business relationships with marijuana dispensary businesses between June 2011 and September 2012.

In recent letters and speeches, federal banking regulators have made clear that they are at least considering taking action.

During a [Nov. 19 speech](#), Fincen Director Jennifer Shasky Calvery said that her agency has initiated discussions with Justice Department officials. A Treasury official also acknowledged what he called "the need for additional clarity" [in a letter last month](#).

Top officials at the Fed, the FDIC, the OCC and the NCUA [have recently stated](#) that they will wait for Fincen and the Justice Department to reach an agreed-upon approach before considering whether to issue their own guidance.

Whatever steps are ultimately taken would likely affect state-regulated markets for both medicinal and recreational pot.

Some in the banking industry doubt there's anything the federal government can do — short of a change in the law — that would overcome bankers' worries about the pot business. Reps. Ed Perlmutter, D-Colo., is sponsoring legislation that would protect banks, but it has attracted only 24 co-sponsors and remains in a House subcommittee.

"The question is: is guidance really enough?" asks Jim Pishue, president of the Washington Bankers Association. "I'm not sure that would be enough for banks to get comfortable getting into that line of commerce."

But others say that the impact of any regulatory guidance will hinge on its specific language. They acknowledge that many banks will stay away from the pot business, no matter what the guidance says, but say that other banks may find the opportunity more attractive.

"Each bank would probably need to consult their own legal counsel," says Childears, who heads the Colorado banking trade group.



## JOIN THE DISCUSSION

[Comment](#)

## SEE MORE IN

[Consumer Finance](#)

## RELATED TAGS